

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

ROWDY D. ANDERSON,)	Cause No. CV 12-6-H-DLC-RKS
)	
Petitioner,)	
)	
vs.)	FINDINGS AND RECOMMENDATION
)	OF U.S. MAGISTRATE JUDGE
WARDEN LEROY KIRKEGARD;)	
ATTORNEY GENERAL OF)	
THE STATE OF MONTANA,)	
)	
Respondents.)	

On October 2, 2012, mail directed to Petitioner Rowdy Anderson in the course of this habeas action was returned to the Court marked “not deliverable as addressed - unable to forward.” Someone wrote “deceased” on the envelope. On October 18, 2012, Mr. Anderson was ordered to show cause why this action should not be dismissed as moot, *Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998), for failure to maintain a mailing address, D. Mont. L.R. 5.2(b), or for failure to prosecute, Fed. R. Civ. P. 41(b). Mr. Anderson was advised that failure to respond would result in issuance of

a recommendation for dismissal of this action. Mr. Anderson did not respond to the Order.

Dismissal is appropriate. A certificate of appealability is not warranted as there is no doubt that the Court does not have a current mailing address for Mr. Anderson.

Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. The Petition (doc. 1) should be DISMISSED.
2. The Clerk of Court should be directed to enter by separate document a judgment of dismissal.
3. A certificate of appealability should be DENIED.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), Mr. Anderson may serve and file written objections to this Findings and Recommendation within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. If Mr. Anderson files objections, he must itemize each factual finding to which objection is made and must identify the evidence in the record he relies on to contradict that finding; and he must itemize each recommendation to which objection is made and must set forth the authority he relies on to contradict that recommendation. Failure to assert a relevant

fact or argument in objection to this Findings and Recommendation may preclude Mr. Anderson from relying on that fact or argument at a later stage of the proceeding. A district judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendation. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

Mr. Anderson must immediately notify the Court of any change in his mailing address by filing a “Notice of Change of Address.” Failure to do so may result in dismissal of his case without notice to him.

DATED this 7th day of March, 2013.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge